



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 4th September, 2024

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.48 of 2018

Petitioner : Upendra Nath Dubey

versus

Respondents : State of Sikkim and Others

Application under Article 226 of the Constitution of India

Appearance

Mr. Upendra Nath Dubey, Petitioner in person.

Mr. Thinlay Dorjee Bhutia, Government Advocate for the State-Respondents.

JUDGMENT

Meenakshi Madan Rai, J.

1. The festering dispute of the Petitioner arises from his perception, that having been employed as a teacher by the Education Department, Government of Sikkim, he has been short changed by the Department, who he alleges, failed to pay him the remunerative dues that had rightly accrued to him. As a consequence, he has been an almost consistent fixture before this Court and before the Hon'ble Supreme Court as obtains from the cornucopia of Petitions filed by him before both Courts.

2. Divested of legalese, the Petitioner's case could best be described as 'much ado about nothing' as the entire matter is based upon the Petitioner not comprehending and thereby misinterpreting the words "ignoring", employed by the Division Bench of **Bhargava, CJ. and Sengupta, J.**, of this High Court, in Paragraph 28(4) of its Judgment, dated 13-12-1995, in Writ Petition No.30 of 1994. Vide the misunderstood Paragraph, the Court ordered as below;



"28. Keeping everything in view and all the matters considered in the preceding paragraphs we think that justice would be met if steps in the following manner are taken by the Government :

.....
 4. Total period of service on adhoc or contractual basis, **ignoring the period of break if any**, is to be reckoned as qualifying service towards notional fixation of initial pay in the grade and also for the purpose of pension.

....."
 [emphasis supplied]

(i) This observation arose on account of the fulcrum of the Petitioner's case that, he was not on contractual services with the Government of Sikkim from 16-12-1987 to 15-02-1988, in other words, he was unemployed during this period and thereafter from 22-03-1991 to 09-06-1996. There was thereby a break in his services during the aforementioned periods (*supra*).

(ii) The Petitioner has chosen to misinterpret this Paragraph (*supra*) to suit his purpose, by claiming that, the Court had directed the Department to "ignore the break", which according to him means to "include" his break in service, for the purposes of his pay fixation at the initial stage and later for fixation of his advancement grade, although he was not even in the employment of the Department. This mis-conception of the Petitioner has been clarified incessantly by this Court, vide its Judgments/Orders in Civil Review Petition No.05 of 1995 dated 10-02-1996 (interim order) and 23-05-1996; Writ Petition No.08 of 1998 dated 22-08-1998; Civil Review Petition No.04 of 1998 dated 11-09-1998; Civil Misc. Application No.214 of 1999 dated 17-11-1999; Contempt Petition No.01 of 2000 dated 05-09-2000 and Writ Petition (C) No.46 of 2005 dated 05-03-2007, the details of which shall be delineated hereinafter. Special Leave Petitions filed before the Supreme Court impugning such




Judgments/Orders were also dismissed as evident from the Orders in the Petitions for Special Leave to Appeal (Civil) No.18990-18991/1998 dated 11-01-1999; Special Leave to Appeal (Civil) No.21318/2000 dated 09-02-2001; Special Leave to Appeal (Civil) No.9571/2007 dated 09-07-2007 and Review Petition (C) No.855 of 2007 in SLP(C) No.9571/2007 dated 13-09-2007. Notwithstanding such clarifications, by his insistence on mis-interpreting this Paragraph, he has pulverised this Court with litigation. Pertinently, he has been representing himself through out, without legal assistance or an Advocate, while admittedly he has no legal background, having been a teacher in Mathematics.

3. To summarise the narrative of the Petitioner's case in order to grant it a quietus, it is imperative to trace back the history of the alleged injustice perpetrated on him.

4. The litigious travels of the Petitioner commenced in the year 1991, when for the first time he filed a Writ Petition being WP No.03 of 1991 in this High Court before a Single Bench comprising of **Dayal, J.** In this Writ Petition which is the genesis of his litigations, he made the following claims;

- (a) That, he was appointed on contract as a Trained Graduate Teacher (TGT), in Mathematics (Maths) in the Department of Education on 18-06-1982 for three years.
- (b) On 14-04-1983, he resigned from the post, to complete his Ph.D.
- (c) A few years later, on 16-07-1987 having faced an interview, he was appointed at the Govt. Junior High School, Makha, East Sikkim, as TGT (Maths), on contract for an initial period of five months, i.e., from 16-07-1987 till 15-12-1987 [Paragraph



8(a) of the averments of the Petitioner in Writ Petition No.03 of 1991 (amended)] .

- (d) In the interim, he faced another interview on 25-11-1987 and vide Agreement of Appointment and Offer of Contract Appointment, both dated 15-02-1988, he joined the Govt. Junior High School, Makha, East Sikkim as TGT (Maths) on 16-02-1988. His service was to be guided by Notification No.J(14)20/GEN/EST., dated 16-04-1987, which laid down the terms and conditions governing contract appointments in the Government of Sikkim, in supersession of all previous Notifications, Orders, instructions, etc.
- (e) On 16-03-1989, he submitted an application for transfer to the Central Pendam Senior Secondary School, in the post of PGT (Maths) where an Agreement of Appointment, dated 20-03-1989, and posting order of the same date, bearing No.03/DE/Edn was issued to him, directing him instead to join Govt. Senior Secondary School, Chujachen as PGT (Maths) for a period of two years, on purely temporary basis.
- (f) On 21-03-1989, he was relieved from the Govt. Junior High School, Makha, East Sikkim and on 22-03-1989 he joined Govt. Senior Secondary School, Chujachen as PGT (Maths).
- (g) He claims that the services of other teachers, appointed on contractual basis variously between 1987 to 1991 (Paragraphs 27 to 29 of the Petition), were regularized but he worked for almost a decade on contract, although selected on the basis of interviews conducted by a duly constituted Selection Committee.



(i) The prayers *inter alia* in the Writ Petition (amended) sought the following directions;

- “(a) A stricture against the State of Sikkim, Government of India in light of perjury, fabricating/giving false evidences, **violating the order of this Hon’ble Court**, confinement, discrimination, and denial to fulfil the commitment.
- (b) A decree of declaration for vital loss (sic) and prestige loss, against the State of Sikkim and in favour of this Petitioner.
- (c) A direction/instruction to the State of Sikkim in order to regularise the services of this petitioner with effect from 16.7.87 with all arrears (including winter brake [sic, break]) as claimed in para (34) of this petition and all consequential benefits together with costs.
- (d) Direction to the State of Sikkim for posting the petitioner in T.N. Sec. School on PGT (Maths) post (after quashing the appointment of Fr. Rasquinan), which was reserved for the petitioner considering the safety of properties and life of this petitioner.”

[emphasis supplied]

For clarity, it may be mentioned here that the Order of this Court reflected at Prayer (a) above was dated 17-03-1992, in WP No.03 of 1991, whereby the State-Respondents was directed not to make further appointments in the posts of PGT (Maths), without reserving one post, until further orders.

(ii) The State-Respondents contested the case of the Petitioner and requested the Court to dismiss his Writ Petition as being devoid of merit. This Court while determining the matter along with other connected Writ Petitions, pertaining to other Petitioners, on similar issues, being Writ Petition No.1 of 1991, Writ Petition No.11 of 1991, Writ Petition No.12 of 1991, Writ Petition No.14 of 1991, Writ Petition No.11 of 1992, Civil Writ Petition No.14 of 1992, Writ Petition No.16 of 1992 and Writ Petition No.17 of 1992, at Paragraph 4 of its Judgment, dated 10-12-1992, authored by **Dayal ACJ.**, sitting singly, observed *inter alia* as follows;



“4. The point for decision is, whether the petitioners have been able to make out a case of having being dealt with arbitrarily, and are as such entitled to claim regularisation on the basis of their past services, or, whether they are not entitled to base their claim for regularisation on past service and have to undergo the process of fresh selection as the new applicants have to go through. **The Sikkim Government Service Rules, 1974 are the rules concerning recruitment and conditions of service of persons appointed to the services and posts in connection with the affairs of the State of Sikkim. These rules, though were framed prior to the merger of Sikkim into the Indian Union were later adopted by the Government of Sikkim, in exercise of the powers conferred by the proviso to Article 309 of the Constitution. Clause (k) of Article 371F of the Constitution grants blanket immunity against any challenge as to validity of the pre-merger laws by providing that notwithstanding anything in the Constitution all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority.**

[emphasis supplied]

(iii) The Court while thus proceeding to discuss Rule 4(4) of the Sikkim Government Establishment Rules, 1974 opined that the Sikkim Government Service Rules, 1974 and the Sikkim Government Establishment Rules, 1974, after being adopted under the proviso to Article 309 of the Constitution of India, ceased to be pre-existing law as contemplated under Clause (k) of Article 371F of the Constitution and its validity became liable to be tested, as per the provisions of the Constitution, in the same manner and to the same extent as any other Rule. That, as regards the specific case of the Petitioner, although the Learned Advocate General had submitted that the Petitioner is a Post-Graduate Teacher and the services of Post-Graduate Teachers employed on contract were not regularised, the Court held that it did not find any justification between Graduate and Post-Graduate Teachers in the matter of regularisation of their services. It was ultimately ordered as follows;

“11. **In the result, the petitions are allowed and the State Government is directed to appoint the petitioners in substantive posts as**



graduate or post-graduate teachers, as the case may be. The past service rendered by the petitioners shall be reckoned as qualifying service for the purpose of pension. However, the past service shall not be reckoned for any other purpose such as seniority. As regards Writ Petition No.3 of 1991, this order shall be implemented within 3 months from today and in respect of other petitions, as early as possible but before any fresh appointments are made. No costs."

[emphasis supplied]

5. The State-Respondents being aggrieved by the pronouncement, assailed it before the Supreme Court, in Civil Appeal No.4290 of 1994 arising out of SLP(C) No.406-14 of 1993. The Supreme Court in the said Civil Appeal passed an order for maintenance of status quo on 12-02-1993. When the Civil Appeal was thus pending, the Petitioner filed I.A. No.10 of 1993 [mentioned in the Order Sheet as I.A. No.10/94 on 29-04-1994, in Civil Appeal Nos.4289-97 of 1994 arising out of SLP(C) No.406-14 of 1993 (*State of Sikkim and Another vs. Ashok Kumar Singh and Others*)], on 14-10-1993, before the Supreme Court, claiming *inter alia* parity with similarly situated non-local teachers. The Supreme Court, vide its Order dated 29-04-1994, in the Civil Appeals (*supra*) while also taking on board SLP(C) No.402/1993 *inter alia* observed that, the entire controversy had been considered in its Judgment in Civil Appeal No.4918 of 1984 along with other connected Appeals, titled ***State of Sikkim vs. Surendra Prasad Sharma and Others***¹ (decided on 19-04-1994), in which the Court had held that the local teachers of the State of Sikkim stand as a class by themselves and the non-locals cannot claim parity with them. Therefore, the controversy was now concluded by the said Judgment. In terms thereof, the Judgment of this High Court dated 10-12-1992 (*supra*) was set aside. The Supreme Court vide the same Order (*supra*), granted the Respondent (Petitioner herein) the option of submitting an application for consideration of

¹ (1994) 5 SCC 282



his claim, according to the prevalent Rules, on par with non-locals, within a period of two months from the date of the receipt of the order.

(i) Pausing here momentarily, it would be necessary to understand that in the ratio of **Surendra Prasad Sharma** (*supra*), the Supreme Court discussed the provisions of Article 371F(k) of the Constitution (special provision for the State of Sikkim) and the effect of the *non obstante* clause. It was observed that it protects all existing laws even if in conflict with the provisions of the Constitution. While discussing Rule 4(4) of the Sikkim Government Establishment Rules, 1974, it was held that in the proviso to the said Rule there is reference to Sikkimese nationals and non-Sikkimese nationals. That, the said proviso posits that non-Sikkimese nationals may be appointed only when suitably qualified and experienced Sikkimese nationals are not available and provides for replacement of such non-Sikkimese nationals by Sikkimese candidates as and when the latter become available. This High Court vide its Judgment dated 10-12-1992 (set aside by the Hon'ble Supreme Court) in **Surendra Prasad Sharma vs. State of Sikkim**² had refused to construe the proviso to Rule 4(4) *supra*, to mean that local residents of Sikkim were to be given preference over non-residents of Sikkim. The Supreme Court while holding otherwise observed that, the High Court had adopted a highly technical approach. The Supreme Court instead opined that, Rule 4(4) of the Sikkim Government Establishment Rules provided for preferential treatment to Sikkimese nationals in matters relating to employment

² WP(C) No.29 of 1982 decided on 29-02-1984



or appointments under the Government of Sikkim. That, even if a provision in the Establishment Rules appears to offend Article 16(2), since such a provision is permissible by virtue of Article 16(3) and Parliament permits its continuance by a special provision, i.e., Article 371F(k), the said requirement of giving preference to 'locals', cannot be struck down as unconstitutional.

6. Pursuant to the Judgment of the Supreme Court, the Petitioner filed applications, dated 06-05-1994, 23-05-1994, 26-05-1994 and 20-06-1994 to the Education Department, Government of Sikkim, claiming absorption as PGT (Maths), into regular establishment with effect from 11-01-1992. He also sought weightage for past experience and qualifications, according to the prevalent law, on par with the non-locals and similarly situated contract teachers, referred to in I.A. No.10 of 1993. The Government vide its communication No.413/Est/Edn., dated 26-07-1994, refused to consider his prayers as he did not fulfil the requisite criteria of continuous contractual service for four years and informed him accordingly. It was explained therein that in view of the Judgment of the Supreme Court dated 29-04-1994, in Civil Appeal Nos.4287-94 of 1994, the Department had construed the Petitioner's application as his response to the advertisement and a calling letter was sent to him on 14-06-1994, requiring him to appear at the interview, for the post of PGT (Maths), on 02-07-1994 at 10.30 a.m. in the Chambers of the Director, Education. The Petitioner refused to accept the communication. On such refusal, the letter was sent by registered AD to his Delhi address, that too was returned. That, as he failed to attend the interview, he could



not be appointed by the Government as detailed in the communication dated 26-07-1994 (*supra*).

7. Alleging that the State-Respondents were guilty of contempt on their refusal to appoint him, the Petitioner was again before the Supreme Court, in Contempt Petition No.184/1994 in Civil Appeal No.4290/94 (*Upendra Nath Dubey vs. S. W. Tenzing & Anr.*). The Supreme Court vide its Order dated 12-12-1994 concluded that the Respondent could not be held guilty of contempt, and the appropriate remedy for the Petitioner was to seek redressal in the appropriate Court. The contempt petition was dismissed with the observation that no opinion had been expressed on the merits with regard to the correctness or otherwise of the order passed by the Government, which was assailed as contempt of the order of the Court.

8. Pursuant to such dismissal, the Petitioner was yet again before this High Court, before a Bench comprising of **Bhargava, CJ.**, in Writ Petition No.30 of 1994. In the said Writ Petition, the prayers *inter alia* were as follows;

- “(i) To pass specific and forcing directions (sic) to the State of Sikkim to absorb the petitioner in person (U.N. Dubey) immediately into regular establishment on PGT MATH Post w.e.f. 11.1.1992 (**entitling him to his salary for any break treating the gap as non-existent as a result of his regularisation**) applying cum (sic) relaxing present rules in vogue (which are applicable to all existing/non-existing non-local contract teachers/new non-locals and are in force in Sikkim since 1992) and thereby not subjecting him also to re-appear in any test cum interview on the basis of his past experiences similar to Mr. J. P. Verma PGT Economics of the same Senior Secondary School, Central Pendam and at par with all the similarly situated and automatically terminated non-local contract teachers referred in I.A. No. 10 filed in Civil Appeal Nos. 4290/94 and thereby treating the petitioner as a Contractual employee till 10.1.1992 by way of renewing his contract



periods without any break in his services from time to time.

- (ii) To pass specific and forcing **directions to the State of Sikkim to clear all the dues and arrears of salary of this petitioner for all breaks or gaps treating him as a continuous contractual employee from 16-7-1987 to 10-1-1992 and as a regular employee from 11-1-1992.**
- (iii) To pass other or further orders as this Hon'ble Court deems fit and proper in the interest of justice entitling the petitioner for costs, T.A/D.A., 10 days difference in salary (for his official relieving from Makha Jr. High School to join Chujachen Senior Secondary School on PGT Math post) **and all the other dues as disclosed in Writ Petition No.3/91** (disposed earlier by this Hon'ble Court). For which act of kindness the petitioner shall ever pray.
- (iv) To dispose injunction Petition No.3/91 filed in Writ Petition No.3/91 but not yet disposed."
[emphasis supplied]

(i) The State-Respondents contested the said petition by once again pleading with the Court to reject the prayers put forth and that all reliefs sought for had already been granted to the Petitioner. This Court, took up the Writ Petition along with others that were tagged with it as the questions of law involved in all were almost identical, being Writ Petition No.27 of 1994, Writ Petition No.4 of 1995 and Writ Petition No.17 of 1995. The petitions were disposed of on 13-12-1995 by **Bhargava, CJ. and Sengupta, J.** The Court in Paragraphs 28 and 29 of the Judgment authored by **Sengupta, J.**, observed as follows;

"28. Keeping everything in view and all the matters considered in the preceding paragraphs we think that justice would be met if steps in the following manner are taken by the Government :

1. A scheme for regularisation of service, adhoc or contractual, of the non-local teachers, graduate or post-graduate, is to be formulated by the Government, following the guidelines as noted hereafter.
 - (a) An independent Committee or Service Commission is to be set up to find out candidates whose services might be regularised.
 - (b) Government will prepare a list of candidates who would be brought to



the consideration zone of the Committee/Commission. The list should include all the petitioners before us.

- (c) The Committee or Commission would prepare a list of eligible candidates in order of merit-cum-seniority.
 - (d) Candidate once interviewed or tested at the point of initial appointment or at any subsequent time, should not be asked for further interview or test.
 - (e) The list of eligible candidates would be prepared on the basis of service records including adverse remarks, if any, of each of the candidates.
2. All further appointments in existing and future vacancies are to be made on regular basis from the list of eligible candidates prepared by the Committee, one after the other.
 3. While giving such appointments, restrictions on entry-age should be waived.
 4. **Total period of service on adhoc or contractual basis, ignoring the period of break if any, is to be reckoned as qualifying service towards notional fixation of initial pay in the grade and also for the purpose of pension.**
 5. There will be no appointment on regular, adhoc or contractual basis either from locals or from non-locals till the list of eligible candidates as prepared, is exhausted.

29. The scheme as noted above should be prepared within two months from this date and list of the eligible candidates should be prepared as suggested above within one month from thereafter. It is, hence,

O R D E R E D

that all the four writ petitions are disposed of without any order as to costs with a direction on the Government-Respondent to take steps in the manner as suggested in the body of this Judgment.”

[emphasis supplied]

9. Against this Order/Judgment, the State filed a Review Petition being Civil Review Petition No.05 of 1995 (*State of Sikkim and Others vs. Ashok Kumar Singh and Others*) before a Single Bench of this Court comprising of **Sengupta, J.** then. The contentions of the State *inter alia* were that Clause (2) and Clause



(5) in Paragraph 28 of the Judgment *supra*, dated 13-12-1995, passed by the Court would stand in the way of the State Government in effectively complying with the Judgment, as it was contrary to the provisions of Rule 4(4) of the Sikkim Government Service Rules and the Establishment Rules. When the interim order dated 10-02-1996 was pronounced, the Court comprised of a Division Bench of **Bhargava, CJ. and Sengupta, J.**, where the Court *inter alia* observed that;

“.....

It should be made clear that this Court has not directed anything by which the services of all the adhoc and contractual teachers including the petitioners are to be regularised. Scope has been left with the Committee or Commission, to be appointed by the State Govt., to find out suitability of the petitioners and other adhoc teachers.

.....

It has been submitted by Shri U. N. Dubey, one of the respondents in this review petition, **that he served on adhoc basis for more than three years and is out of employment for five years and that the entire period should be, in his case, reckoned as qualifying service towards fixation of initial pay in the grade and also for the purpose of pension. He has further claimed that he should get all arrears of pay for this period. Regarding arrears of pay there cannot be any order. But regarding fixation of initial pay if and when his service is regularised the case would be covered under Clause 4 of the paragraph 28 of our judgment.**

.....”

[emphasis supplied]

(i) The Review Petition was finally disposed of on 23-05-1996 by the Learned Single Judge (**Sengupta, J.**), who observed at Paragraph 3 therein that, from amongst the two Judges who had formed the Division Bench which had settled the impugned Judgment on 13-12-1995, the Chief Justice had since retired. The Review Petition was thus heard by the Learned Single Judge in terms of Order XLVII Rule 5, of the Code of Civil Procedure, 1908 (for short, “CPC”). The Court observed as follows;

“17. It has been argued on behalf of the respondents in this review petition that past service, of



the adhoc Teachers whose services are going to be regularised, should be taken into account for fixation of their seniority and also they should be treated as on duties for the years in between the dates of their retrenchment and of their regularisation in service. In this regard, we must refer to Dharwad P.W.D. Employees' Association case where it has been clearly noted that by awarding such a benefit, the Exchequer should not be encumbered unnecessarily and unreasonably. **Moreover, in Para 28(4) of the original judgment the effect of regularisation of service of such adhoc Teachers were taken care of and it was noted that total period of service on adhoc or contractual basis, ignoring the period of brake (sic, break) if any, is to be reckoned as qualifying service towards notional fixation of initial pay in the grade and also for the purpose of pension. Therefore, the candidates whose services are going to be regularised cannot expect anything further to the benefit ensured in Para 28(4) of the judgment.** Since we have directed to place the adhoc Teachers who are to be regularised ahead of the Teachers to be recruited directly, some amount of benefit in terms of seniority becomes available to them."

[emphasis supplied]

10. After the pronouncement of the aforementioned Judgment, dated 23-05-1996, an Office Order bearing Ref. No.547/Est.I/Edn., dated 07-06-1996, was issued by the Department of Education, which is as follows;

**"DEPARTMENT OF EDUCATION
GOVERNMENT OF SIKKIM
GANGTOK - 737101
SIKKIM**

Ref. No.547../Est.I/Edn. Date ..7-6-1996.....

OFFICE ORDER

Pursuant to the order of Hon'ble High Court of Sikkim dated 23-5-96 in Civil Review Petition No.5 of 1996 (sic, 1995), Mr. U.N. Dubey is hereby transferred and posted as P.G.T. (Math) at Hee-Yangthang Sr. Secondary School w.e.f. the date he takes over the charge of the post.

He shall draw a monthly pay of Rs.1820/- plus admissible allowances till further order.

BY ORDER.

SD/- (C. T. WANGDI)
DEPUTY SECRETARY-EDUCATION

....."
[emphasis supplied]

In compliance thereof, on 10-06-1996 by submitting his joining report, he joined the said post.



11. On 09-12-1996, the Petitioner suddenly preferred a legal Notice to the Chief Secretary, Government of Sikkim, making claims for —

- (a) arrears of salary from 22-03-1991 to 09-06-1996;
- (b) annual increments treating him in regular service from 16-07-1987;
- (c) seniority from 16-07-1987;
- (d) other emoluments which had accrued to him as a result of his regularisation w.e.f. 16-07-1987 till 29-04-1994, at par with non-local contract teachers regularized by the Education Department.

(i) As per the said Notice the Petitioner demanded that the Chief Secretary settle the Petitioner's claims in terms of the Order of the Supreme Court dated 29-04-1994, passed in IA No.10 of 1993, filed in Civil Appeal No.4290 of 1994, within a period of two months from the date of receipt of the Notice. From the records before this Court, it appears that pursuant to the above correspondence of 09-12-1996, Office Order No.739/Est-I/Edn., dated 18-12-1996, was issued to the Petitioner as follows;

"DEPARTMENT OF EDUCATION
GOVERNMENT OF SIKKIM
GANGTOK.

O.O. NO. 739 /Est-I/Edn. Dt. 18\12\1996.

OFFICE ORDER

In continuation to office order No.547/Est-I/Edn dated: 07.06.96, the basic pay of Shri U.N. Dubey, PGT (Maths) Hee-Yangthang Sr. Sec. School (West) is hereby fixed at Rs.1940/- per month in the scale of Rs.1820-60-2066-EB-75-3200 w.e.f. 10.06.96. In addition, he will be entitled to draw such allowances as are admissible under the rules.

The date of next annual increment shall be 01.03.97 unless otherwise postponed by extra ordinary leave exceeding one month.

His **past services on contract w.e.f. 16.07.87 to 15.12.87 and w.e.f. 16.02.88 to**



21.03.91, duly ignoring **the break in service w.e.f. 16.12.87 to 15.02.88 and w.e.f. 22.03.91 to 09.06.96** shall be counted for the purpose to retirement benefits only.

By Order,

Sd/- (T. T. Dorjee) IAS.
Secretary – Education

.....”

[emphasis supplied]

12. In addition thereto, on 17-06-1997 vide a letter bearing Ref. No.1242/Est-I/Edn., the Deputy Secretary, Education Department, informed him that with regard to his legal Notice dated 09-12-1996 his grievances were examined and not found tenable.

13. Aggrieved, the Petitioner filed I.A. No.11 in Civil Appeal Nos.4289-97/1994, before the Supreme Court, complaining that the Government had not responded to his legal Notice, dated 09-12-1996 (*supra*). The Supreme Court on 05-01-1998 dismissed the I.A., observing that it was not maintainable.

14. Relevantly, it may be noticed that later in time, at Paragraph 8 of the Judgment dated 22-08-1998, in Writ Petition No.08 of 1998, (which shall be referred to in detail later), the Learned Single Judge of this High Court (**Sengupta, J.**) referred to I.A. No.11 of 1997 (*supra*) and observed that “*On 05.01.1998 when the matter came up for hearing before the Supreme Court it was observed that the IA was not maintainable. Petitioner says that he was advised by the Hon’ble Judges including the Chief Justice who dealt with the matter on 05.01.1998 that the Petitioner should approach this Court for his redress. It is too hard to conceive that such an advice was verbally given by the Supreme Court.*”

15. Following the dismissal of I.A. No.11 of 1997 (*supra*) by the Supreme Court, he filed Writ Petition No.08 of 1998 on 25-02-1998 again in this High Court, before a Bench comprising of a Single



Judge, **Deb, J.**, *inter alia* reiterating his claim for difference of salaries and arrears of salaries, viz.;

“(i) to pass time bound specific, binding orders/directions and thereby direct the respondents :

(a) To regularise the services of this petitioner with effect from 16-07-87 treating him post Graduate teacher (Maths) with effect from 16-02-88, counting his seniority with effect from 16-07-87, **paying him difference of salaries and arrears of salaries for all the breaks (w.e.f. 16-12-87 to 15-02-88 and with effect from 22-03-91 to 09-06-96)** and fixing the pay counting his annual increments since 16-07-87 with all other emoluments, etc, due to the petitioner as a result of his regularisation with effect from 16-07-87 at par with non-local contract teachers regularised by Education Department, Government of Sikkim till June 94.

(b) To pay compensation for petitioner’s damage i.e. his vital loss caused due to the respondents;

(c) To pay whole cost of all the cases filed by the petitioner either in Hon’ble High Court or in Hon’ble Supreme Court starting from writ petition No.3/91.

(d) To provide the petitioner Inchargeship of Hee-Yangthang Sr. Sec. School (West Sikkim) counting his seniority since 16-07-87 and treating him PGT (Maths) with effect from 16-02-88 and thereby treating him senior most PGT of that school, where Sri G.B. Bista has been given Inchargeship in order to humiliate this petitioner and in order to check petitioner’s opportunity to have an experience of the Administrative work.

(e) To review and settle all prior leave without pay orders and to pay the salaries for those periods as a result of petitioner’s regularisation.

(f) To pay arrears of the increments and leave encashments as referred in Ann.TW-13 collectively of this writ petition.

(ii) To reject the impugned denial letter No.1242/Est-1/Edn dated 17-06-97 and impugned corrigendum letter No.120/Est-1/Edn dated 03-10-97 issued by the respondents to this humble petitioner.

(iii) To pass such other orders/ as this Hon’ble Court may deem fit and proper in circumstances and facts of the case.

And for this act of kindness, the petitioner shall remain ever grateful.”

[emphasis supplied]

(i) The State-Respondents resisted this Petition, the averments canvassed being that, by virtue of several Judgments of this High Court and that of the Hon’ble Supreme Court, all disputes



had been set to rest as all claimed reliefs had been extended to the Petitioner, in terms of the directions of the Courts.

(ii) Writ Petition No.08 of 1998 was finally disposed of vide the Judgment dated 22-08-1998 by **Sengupta, J.**, whereby the entire history of the litigations pursued by the Petitioner including all matters filed before the Supreme Court, interlocutory applications were delineated at length by the Hon'ble Judge. It was reiterated in Paragraph 8 onwards of the Judgment *inter alia* as follows;

"8..... We have already dealt with the plea of the Petitioner for being considered separately for regularisation in the manner as was done in earlier cases and not in the manner as was done at subsequent stages pursuant to the directions given by this Court in its judgment dated 13.12.1995 and we have held that the Government did not act in arbitrary manner.

8. (sic, 9.) Now comes the question of arrear pay, etc. In this connection, the directions given by this Court in Paragraph 28(4) of the judgment dated 13.12.1995 may be referred to. It may also be noted that this Court made specific observations with respect to the claim of the Petitioner in this respect at paragraph 9 of the order passed by the Division Bench of this Court on 10.02.1996 and also in paragraph 17 of the final order dated 23.05.1996 passed in Review Petition No.5 of 1995 where it has been categorically noted that the total period of service on adhoc or contractual basis, ignoring the period of break, if any, is to be reckoned as qualifying service towards fixation of initial pay in the grade and also for the purpose of pension. The prayer of the Petitioner for arrears of pay was specifically denied by the aforesaid order dated 10.02.1996. Order passed by the Government on 18.12.1996 was in strict compliance with such directions.

From the observations made in the preceding paragraphs we do not consider that there is any merit in the Writ Petition. The Writ Petition is, therefore, dismissed on contest without costs."

[emphasis supplied]

16. Review Petition No.04 of 1998 was filed by the Petitioner (*U.N. Dubey vs. State of Sikkim and Others*) on 10-09-1998 under Order XLVII Rule 1 CPC, with a prayer for Review of the Judgment, passed by this Court on 22-08-1998, in Writ Petition No.08/1998. The contention of the Petitioner was that the Court by its Judgment



dated 22-08-1998, took a stand contrary to its earlier decision and a review would rectify the injustice caused to him.

(i) The Court comprising of **Sengupta, J.** while disposing of the Review Petition, evidently exhausted by the unending litigation initiated by the Petitioner, observed that, the grievances of the Petitioner in a series of litigations comprising of Writ Petitions, Contempt Petitions and Review Petitions had all been dealt with and important decisions concerning the Petitioner and other non-local contractual teachers had been pronounced by the Court, vide Order dated 13-12-1995. Clarifications were made in that regard also as sought, in Writ Petition No.8/1998, vide Order dated 22-08-1998. That, the points raised by the Petitioner in the Review Petition were covered by the earlier Judgments of this Court and that the endless stream of litigations over a particular issue should be stopped. The Review Petition was rejected *in limine*, vide Order dated 11-09-1998.

17. Undeterred by such observations, the Petitioner was before the Hon'ble Supreme Court seeking Special Leave to Appeal (Civil) Nos.18990-18991/1998, assailing the Judgment and Order dated 22-08-1998, in Writ Petition No.08/1998 (*supra*) and Order dated 11-09-1998 in CRP No.04 of 1998, which the Supreme Court dismissed on 11-01-1999 after hearing the Petitioner in person.

18. The Petitioner again filed a Civil Misc. Application No.214 of 1999 on 15-10-1999 (*U. N. Dubey vs. State of Sikkim and Others*) which was disposed of by the Division Bench of this High Court on 17-11-1999 with the following observations made by **Dayal, CJ. and Deb, J.;**

"Heard on the application made by the petitioner purporting to seek clarification with respect



to the meaning and intention of paragraph 28(4) of the order dated 13-12-1995 passed in Writ Petition No.30 of 1994 and certain other paragraphs mentioned in the prayer clause. The petitioner has been unable to show that there is any ambiguity in any of the orders requiring clarification. His submission is that the State has not given him the reliefs as ordered by the Court. This is hardly any ground for seeking clarification. The application is, therefore, rejected."

[emphasis supplied]

19. Notwithstanding such pronouncement, the Petitioner then took recourse to issuance of a legal Notice to the Commissioner-cum-Secretary, Education Department, on 22-11-1999, seeking execution of the Orders of the High Court, dated 13-12-1995 (Writ Petition No.30/1994), 10-02-1996 and 23-05-1996 (Civil Review Petition No.05/1995) within two months from the date of receipt of the Notice.

(i) This was responded to by the Joint Secretary, Education Department, vide letter bearing Ref. No.639/Est-I/Edn., dated 20-01-2000, informing the Petitioner that his demands were unsustainable and misconceived.

20. Following this response, the Petitioner filed a Contempt Petition No.01 of 2000 (*U. N. Dubey vs. T. T. Dorjee*), against the Commissioner-cum-Secretary, Department of Education, before this High Court for alleged non-compliance of the Orders passed by the Court on 13-12-1995 in Writ Petition No.30 of 1994, and 10-02-1996 and 23-05-1996 in Civil Review Petition No.05 of 1995.

(i) Vide the Judgment of the Division Bench comprising of **Dayal, CJ. and Deb, J.** dated 05-09-2000 in the said Contempt Petition, the High Court once again took into consideration the grievances of the Petitioner. In Paragraphs 2 and 3 of the Judgment while referring to Paragraph 28(4) of the Judgment, dated 13-12-1995, it was observed as follows;



"2. The contempt petition relates to the direction issued by this Court in sub-para 4 of paragraph 28 in the judgment dated 13.12.1995 in writ petition No.27 of 1994 and three other connected writ petitions which states as under:-

"28. Keeping everything in view and all the matters considered in the preceding paragraphs we think that justice would be met if steps in the following manner are taken by the Government :

.....

4. Total period of service on adhoc or contractual basis, ignoring the period of break if any, is to be reckoned as qualifying service towards notional fixation of initial pay in the grade and also for the purpose of pension."

3. Pursuant to that direction, admittedly the petitioner was given regular service with effect from 10th June, 1996. His pay was fixed vide Office Order No.739/Est-1/Edn. dated 18th December, 1996 (Annexure P5) issued by the Secretary, Education in the following terms :-

....."

[emphasis supplied]

The Division Bench further observed that;

"3.

It is not disputed before us that for the purpose of fixation of pay, **the service rendered on contract by the petitioner with effect from 16.7.1987 till 21.3.1991 was counted for refixation of pay ignoring the break from 16.12.1987 till 15.2.1988. The period from 22.3.1991 till 9.6.1996 was not taken into consideration for fixation of pay. The petitioner submits that this period should also have been counted for fixation of pay because according to him the word 'break' occurring in sub-para 4 of paragraph 28 of the judgment extracted above conveys that sense. After hearing the petitioner and the learned Advocate General we find ourselves unable to agree with the submission made by the petitioner. Sub-para 4 of paragraph 28 makes it manifest that for the purpose of fixation of initial pay, the total period of service on adhoc or contractual service was to be taken into consideration and if there was break between the date on which the contract service commenced and the date on which contract service ended, the period of break should have been ignored. This is exactly what has been done while fixing the pay. The period from 22-3-1996 (sic, 22-3-1991) till 9-6-1996 cannot be treated as the period of service on contract service.**

4. Petitioner seeks support for his submission from the order dated 10.2.1996 passed in Civil Review Petition No.5 of 1995 where while dealing with similar submission, the Court observed that 'regarding fixation of initial pay, if and when his service is regularised, his case would be covered under Clause 4 of paragraph 28 of our judgment.' **The petitioner submits that the judgment meant that the petitioner was entitled to count the period from 22.3.1991 to 9.6.1996. We are unable to agree with the submission as we are of the**



view that the words referred by the petitioner mean only this that the matter was to be governed under Clause 4 of paragraph 28 and not that he was entitled to treat the period as on contract service for the purpose of fixation of pay."

[emphasis supplied]

(ii) The Court was therefore not inclined to consider the interpretation given by the Petitioner as discussed above and it was observed finally that, there was no disobedience or violation of any Order of the Court and the contempt petition was devoid of merit.

21. Against this Judgment, the Petitioner filed a Special Leave to Appeal (Civil) No.21318/2000 (*Upendra Nath Dubey vs. T. T. Dorjee*). The Supreme Court on 09-02-2001 dismissed the Petition, observing that, they did not find any valid ground to interfere with the Order under challenge.

22. On 06-11-2004, a letter bearing Ref. No.172/Est-I/HRDD was issued to the Principal, Sadam Sr. Secondary School, by the Under Secretary, Human Resource Development Department (HRDD), with a copy to the Petitioner, seeking the Petitioner's performance report along with his ACRs, for the financial years 1996-97, 1997-98 and 1998-99, to enable the Department to process the proposal for grant of advancement grade to the Petitioner.

23. Vide Office Order dated 28-12-2004, bearing No.398/Est-I/HRDD, the following Order was issued by the Department granting a higher grade scale of pay to the Petitioner;

"GOVERNMENT OF SIKKIM
HUMAN RESOURCE DEV. DEPARTMENT
GANGTOK

O.O. No. 398/Est-I/HRDD

Dated: 28.12.2004

OFFICE ORDER

On the recommendation of Departmental Promotion Committee and with the approval of Special Secretary, Human Resource Dev. Department Shri Upendra Nath Dubey, PGT (Maths)



Sadam SSS (S) is hereby allowed to attain the higher grade scale of Rs.9000-300-13800 w.e.f. 22.3.99 thereby his pay is fixed as under:-

<u>Sl. No.</u>	<u>Effective date</u>	<u>Basic pay</u>	<u>Scale</u>
01.	1.3.99	Rs.7675/-p.m	Rs.7000-225-11500
02.	22.3.99 (date of higher grade)	Rs.9000/-p.m (pay fixed)	Rs.9000-300-13800
03.	1.3.2000	Rs.9300/-p.m	-do-
04.	1.3.2001	Rs.9600/-p.m	-do-
05.	1.3.2002	Rs.9900/-p.m	-do-
06.	1.3.2003	Rs.10200/-p.m	-do-
07.	1.3.2004	Rs.10500/-p.m	-do-

This O.O supersedes the following O.Os:-

1. O.O No. 87/MSSS/N dated: 2.3.2000
2. O.O No. 07/SSSS/Edn/S dated: 23.3.2001
3. O.O No. 56/SSSS/Edn/S dated: 5.3.2003 and
4. O.O No. 3/SSSS/Edn/S dated: 3.3.2004.

By Order,

Sd/- (P. L. Sharma)
Joint Dir. (HQ)

.....”

24. Close on the heels of this Order, dated 28-12-2004 (*supra*), another detailed Office Order bearing No.457/Est-I/HRDD, dated 19-10-2005, was issued, wherein it was *inter alia* clarified that, the HRDD had inadvertently granted advancement grade in the time scale of pay (admissible on completion of 10 years of continuous service in a particular grade and post), to the Petitioner with effect from 22-03-1999, vide Office Order of 28-12-2004 (*supra*), although the Petitioner was not entitled to such benefits for reasons as already elucidated hereinabove. Vide Order dated 19-10-2005 the Order dated 28-12-2004 was rectified and the Petitioner was placed in the advancement grade with corresponding time scale of pay w.e.f. 22-03-2004, vide Office Order No.155/Est-I/HRDD, dated 21-05-2005.



25. The action of the HRDD in reviewing and rectifying the Office Order, dated 28-12-2004, by Office Order dated 21-05-2005, was impugned by the Petitioner by filing Writ Petition (C) No.24 of 2005, before a Division Bench of this High Court comprising of **Singh, ACJ. and Subba, J.**, who vide their Order dated 20-07-2005, observed that, the rectified Order of 21-05-2005 was withdrawn by the State Government vide Office Order bearing No.310/Est-I/HRDD, dated 19-07-2005.

26. Evidently, a Notice was issued to the Petitioner on 21-07-2005, by the Education Department, directing him to show cause within fifteen days as to why the Office Order of 28-12-2004 should not be cancelled. The Petitioner filed his response dated 31-07-2005. By a letter dated 29-08-2005, he was directed to appear personally before the Joint Secretary – I, in the Head Office on 09-09-2005 at 11.30 a.m., failing which a decision would be taken *ex parte*. The Petitioner instead, submitted a letter dated 07-09-2005 justifying the fixation of advancement grade vide the erroneous Order of 28-12-2004. The Office Order, dated 19-10-2005 (*supra*), observed that the Order of 28-12-2004 was issued erroneously and rejected the show cause dated 31-07-2005 as well as letters of the Petitioner dated 18-03-2004 and 07-09-2005. It was further ordered that the arrears on advancement grade received by the Petitioner due to the erroneous Order of 28-12-2004, would be recovered from the Petitioner, by deduction of convenient equal instalments from his monthly salary, within five years from the date of issue of the Order, i.e., 19-10-2005.

27. As is his wont, the Petitioner again approached the High Court in Writ Petition (C) No.46 of 2005 (*Upendra Nath Dubey vs.*



State of Sikkim and Others) before a Bench comprising of **Roy, CJ. and Subba, J.**, wherein the following prayers *inter alia* were enumerated in the Petition;

- i. quash the impugned Office Order No. 457/Est-I/HRDD dated 19.10.2005 issued by the Respondents to the petitioner,
- ii. pass time bound obligatory direction keeping in mind Respondents' Modified Stand dated 30.08.95 and their contention raised through paragraph 5 of Civil Review Petition No.5/95 and **compelling the Respondents to give all consequential benefits like arrears of salary, seniority, pension benefits etc. to the petitioner for the total artificial and deliberate break period (starting from 22.3.1991 to 9.6.1996)** in between the dates of his retrenchment and of his rejoining service taking this break as ***non-est*** at par with the batch of 186 non-local teachers (some of them are as named in I.A. No. 10/94 filed in C.A. No. 4290/94) and in correct tune with the time bound obligatory direction dated 29.4.1994 passed in I.A. No. 10/94 by the Hon'ble Supreme Court and
- iii. pass other Order/Orders which this Hon'ble Court may deem fit for the ends of justice.

And for this act of kindness, the petitioner shall ever pray."

[emphasis supplied]

(i) The Division Bench of the High Court comprising of **Ray, CJ. and Singh, J.**, vide Judgment dated 05-03-2007, authored by **Ray, CJ.**, dismissed the Writ Petition observing at Paragraphs 10, 11, 12 and 13 as follows;

10. By an order of review passed by a Single Judge alone, who delivered the main judgment on 13.12.1995, his Lordship clarified on 23.5.1996 that the break in service would be counted both for withholding of salary for the period during which the teacher did not actually work, and for denying any extra seniority excepting over direct recruits only. These points do not arise here.

11. The Writ Petitioner's grievance is that even for fixing the date of grant of advancement grade the break in service should not be counted.

12. This is an absolutely unacceptable claim and demand. The 1999 rules state that 10 years' continuous service as Post Graduate Teacher is necessary for grant of advancement grade. **The Writ Petitioner is being given benefit by treating two disjuncted periods of two years and eight years as the required continuous period of 10 years for giving advancement grade. He wants even more. He wants**



the period, which is not his period of actual service at all, also to be counted for giving advancement grade. According to him the only relevant date should be his first rendering of service as Post Graduate Teacher and thereafter only 10 years is to be added to that date irrespective of whether he rendered any actual service during that period of ten years or not, or whether he even drew any salary during that period or not. This submission is only to be clearly formulated for its rejection. The order of the Hon'ble Supreme Court dated 29.4.1994 nowhere directs extraordinary benefits of the above type to be given to the Writ Petitioner. The Writ Petitioner has been treated absolutely fairly and at par with all the others similarly situated.

13. The Writ Petition is dismissed with no order as to costs."

[emphasis supplied]

(ii) Disgruntled thereof, the Petitioner appealed to the Supreme Court, which, vide Order dated 09-07-2007 dismissed the Special Leave Petition (Civil) bearing No.9571 of 2007. Against this Order, the Petitioner filed a Review Petition (C) bearing No.855 of 2007 in SLP(C) No.9571/2007, which too was dismissed by the Supreme Court vide Order dated 13-09-2007 as being devoid of merit.

28. Aggrieved, the Petitioner appears to have submitted a representation to Her Excellency, the President of India, dated 09-08-2008, as revealed by records before this Court. The HRDD, Government of Sikkim, while referring to the correspondence made by the Petitioner to the President of India (the Office of the President having communicated with the Department), informed the Petitioner vide letter, bearing Ref. No.534/Est./HRDD, dated 04-10-2008, that the deduction from his salary was not to penalise him, but was for recovery of excess salary drawn by him, as per O.O. No.457/Est-I/HRDD, dated 19-10-2005.

29. Against this letter, the Petitioner addressed a communication to the Chief Secretary on 15-11-2008 reiterating that, the deduction being made from his salary be discontinued and



his salary be fixed at ₹ 11,400/- as basic pay w.e.f. August, 2007 and the whole amount deducted from his salary w.e.f. August, 2007, be repaid to him.

(i) The Department in response thereof, vide communication, dated 05-02-2009, refused the reliefs claimed and advised the Petitioner to comply with the departmental order.

(ii) The Department vide another letter bearing Ref. No.416/Adm/HRDD, dated 21-07-2016, directed the Petitioner to explain why he was serving notices frequently to the department, in violation of the provisions of the Sikkim Government Servants' Conduct Service Rules, 1981.

(iii) In response thereof, he addressed written communications dated 05-05-2017, 12-05-2017 and 02-11-2017 to the HRDD and communication dated 29-12-2017 to the Chief Secretary, re-agitating his earlier claims and claiming full back wages, including emoluments for the intervening period of five years when he was not in service. He also claimed that due to his non-placement on advancement grade from March 1999, ninety-five Post-Graduate teachers junior to him were drawing more salary than him.

(iv) To these communications, the Government chose to turn a blind eye.

(v) The Petitioner retired from service on superannuation from 31-07-2017, vide Office Order bearing No.00222/HRDD/HQ/16-17, dated 01-03-2017.

30. On 24-09-2018, the instant Writ Petition came to be filed. The instant Petition has been filed under Article 226 and Article 227 of the Constitution of India although this Court in ***Md.***



Shahid and Others vs. Mrs. Marium Iqbal and Others³ on the basis of the law laid down by the Supreme Court in a plethora of Judgments had held that the party is required to approach the High Court under Article 227 of the Constitution of India which lays down the power of superintendence over all Courts by the High Court, only when aggrieved by the orders of the Learned Lower Courts and Tribunals. The Writ Jurisdiction under Article 226 of the Constitution of the India is an altogether different jurisdiction.

(i) According to the averments of the Petitioner, throughout the thirty years of his service the State-Respondents have paid him lesser salary than his juniors. That, the State failed to notionally fix his initial pay w.e.f. 01-03-1996 or properly fix his notional pay scale w.e.f. 01-03-1999 as contemplated in Paragraph 28(4) of the Judgment of this Court, in Writ Petition No.30/1994 dated 13-12-1995. **His contention was that this Court did not pass any Order regarding the full back wages, including emoluments which was due to him, at par with, 186 non-locals as mentioned in I.A. No.10 of 1993 in Civil Appeal No.4290/1994. That, the Supreme Court also did not grant the leave in the related SLPs preferred by him (Paragraph 13 of the Writ Petition). That, despite his representations dated 05-05-2017, 12-05-2017, 02-11-2017 and 29-12-2017, the Respondents did not grant him full back wages including emoluments for the total intervening period of five years.**

The prayers in the instant Writ Petition *inter alia* are as follows;

- “(i) A Rule upon the respondents and each of them to Show-Cause as to why :-
- (a) the petitioner shall not be granted full back wages including emoluments, etc for the total intervening period of 5 years at par with 186 non local teachers (whose names have been mentioned in IA

³ 2017 SCC OnLine Sikk 176



No.10/94 filed in CA No.4290/94 and as contemplated in the contents of Paras 22 to 25 of this Hon'ble Court's Final Order dated 13/12/95 passed in Writ Petition No.30/94 filed in persuasion of Order dated 12/12/94 passed by Hon'ble Supreme Court in Contempt Petition Civil No. 184/94 which had been filed following the respondents' denial dated 26/7/94 to execute the time bound and obligatory order dated 29/4/94 passed by the Hon'ble Apex Court in IA No.10/94 filed in CA No.4290/94);

- (b) the basic pay of the petitioner shall not be fixed at Rs 2240/- w.e.f. 1/3/96 in pay scale of Rs.1820-60-2600-EB-75-3200 instead of Rs.1940/- by way of adding notional increments;
 - (c) the basic pay of the petitioner shall not be fixed at Rs. 7675/- in the pay scale of Rs.7000-225-11150 w.e.f. 1/1/1996 in terms of Sub-Rule 1 of Rule 6 of SGS (Revised Pay) Rules, 1998 and in accordance with the Government Circular No.32/GEN/DOP dated 23/5/98;
 - (d) the petitioner shall not be placed in corresponding pay scale of Advancement Grade w.e.f. 1/3/99 in the scale of Rs.9000-300-13800 and his basic pay shall not be fixed at Rs.9000/- w.e.f. 1/3/99 in terms of Notification No.38/GEN/DOP dated 23/9/99;
 - (e) the basic pay of the petitioner shall not be fixed from 1/1/2006 in the correct tune with the above stated contents of para 24(i)(a) to 24(i)(d) in the pay band of Rs.9300-34800 in terms of Rule 7 of SGS (Revised Pay) Rules, 2009 and in accordance with the Government Notification No.212/GEN/DOP dated 26/11/2009;
- (ii) A Writ or Order or Direction or Declaration that the petitioner shall be granted full back wages including emoluments, etc with all consequential benefits for the total intervening period of 5 years at par with 186 non local teachers (whose names have been mentioned in IA No.10/94 filed in CA No.4290/94 and as contemplated in the contents of Paras 22 to 25 of this Hon'ble Court's Final Order dated 13/12/95 passed in Writ Petition No.30/94 filed in persuasion of Order dated 12/12/94 passed by Hon'ble Supreme Court in Contempt Petition Civil No.184/94 which had been filed following the respondents' denial dated 26/7/94 to execute the time bound and obligatory order dated 29/4/94 passed by the Hon'ble Apex Court in IA No.10/94 filed in CA No.4290/94);



- (iii) A Writ or Order or Direction or Declaration that petitioner's basic pay shall be fixed at Rs.2240/- w.e.f. 1/3/96 with all consequential benefits in pay scale of Rs.1820-60-2600-EB-75-3200 instead of Rs.1940/- by way of adding notional increments ;
- (iv) A Writ or Order or Direction or Declaration that in terms of Sub-Rule 1 of Rule 6 of SGS (Revised Pay) Rules, 1998 and in accordance with the Government Circular No.32/GEN/DOP dated 23/5/98, the basic pay of the petitioner shall be fixed at Rs.7675/- in the pay scale of Rs.7000-225-11500 w.e.f. 1/1/1996 with all consequential benefits;
- (v) A Writ or Order or Direction or Declaration that in terms of Notification No.38/GEN/DOP dated 23/9/99 the petitioner shall be placed in corresponding scale of Advancement Grade w.e.f. 1/3/99 in the scale of Rs.9000-300-13800 and his basic pay shall be fixed at Rs.9000/- w.e.f. 1/3/99 with all consequential benefits;
- (vi) A Writ or Order or Direction or Declaration that in terms of Rule 7 of SGS (Revised Pay) Rules 2009 and in accordance with the Government Notification No.212/GEN/DOP dated 26/11/2009, the basic pay of the petitioner shall be fixed from 1/1/2006 in the correct tune with the above stated contents of para 24(ii) to 24(v) in the pay band of Rs.9300-34800 with all consequential benefits;
- (vii) A Writ or Order or Direction or Declaration for cancellation of all those Ultra Vires Rules and Notifications which have been made by the respondents arbitrarily and after thought to deprive the petitioner from the reliefs as disclosed in paras 16 and 17.
- (viii) A Writ or Order or Direction or Declaration for the costs of the proceedings;
- (ix) Any other Writ or Order or Direction or Declaration as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

And for this the petitioner shall ever pray."

31. The Petitioner appearing for himself put forth his verbal submissions and reiterated the facts of his case. He reiterated the points already raised in the other Writ Petitions discussed hereinabove, by which the reliefs sought by him were extended to him and more importantly the interpretation of Paragraph 28(4) as observed by the Division Bench of this Court, dated 13-12-1995, in



Writ Petition No.30 of 1994, have been dealt with at great length by different Benches of this Court. Apart from the grievance of non-computation in his salary of those years comprising of break in service, he also contended that the advancement grade that was granted to him vide Order bearing No.398/Est-I/HRDD, dated 28-12-2004 and later revoked vide Office Order bearing No.457/Est-I/HRDD, dated 19-10-2005, was arbitrary and unjustified as he is entitled to the amount as directed vide the Office Order dated 28-12-2004. That, the deductions that have been made from his salary ought to be reimbursed to him as grave financial injustice has been meted out to him. Hence, his prayers be granted.

32. Learned Government Advocate vehemently remonstrating the contentions of the Petitioner sought to clarify that a perusal of the records would indicate that the grievances of the Petitioner have time and again been addressed by this High Court and the Hon'ble Supreme Court yet he insists on making claims where none exists. No penalty was sought to be imposed on him by the Department when the deductions made from his salary. Adverting to the facts of the case Learned Government Advocate sought to elucidate in detail the years of service rendered by the Petitioner, the reasons why there was no fixation of his pay scale for years when he was unemployed due to break in his services and the reimbursement claimed from him. That, he has been meted out fair treatment by the State-Respondents and on his retirement in July, 2017, he was paid his Death-cum-Retirement Gratuity amounting to ₹ 10,00,000/, (Rupees ten lakhs) only, Leave Encashment amounting to ₹ 8,76,180/- (Rupees eight lakhs, seventy six thousand, one hundred and eighty) only, and all other admissible



payments, vide the Pension Payment Order No.562/Fin/Pen, dated 13-09-2017. That, he has also received the final payment of GIS amounting to ₹ 43,944/- (Rupees forty three thousand, nine hundred and forty four) only, and the final payment of GPF amounting to ₹ 2,92,119/- (Rupees two lakhs, ninety two thousand, one hundred and nineteen) only. Hence, the State-Respondents had made all payments which were due to him as a Government employee, during his tenure from June 1996 to July, 2017. That, the Petitioner also benefitted from the Sikkim Government Services (Revised Pay), Rules 2018, which came into effect from 01-01-2016 on the basis of which payment of arrears were made to him. In addition, the Petitioner was also paid retirement TA amounting to ₹ 37,965/- (Rupees thirty seven thousand, nine hundred and sixty five) only. That, in fact a sum of ₹ 6,75,000/- (Rupees six lakhs and seventy five thousand) only, as claimed by him in I.A. 10 of 2020 was granted to him by the Department as ordered by this Court on 09-12-2020. Vide the same Order it was specified that as agreed by the Petitioner the amount tentatively calculated shall be paid to the Petitioner within four weeks from the date of the Order. This payment would however be subject to the final outcome of the Writ Petition. On 11-03-2021, the Petitioner conceded that the State-Respondents had made over a sum of approximately ₹ 6,75,000/- (Rupees six lakhs and seventy five thousand) only, yet he remains dissatisfied. That, false submissions are posited by the Petitioner as there are no amounts that are due to him from the Department. As no other benefits or payments accrue to the Petitioner, his Petition be dismissed with exemplary costs.



33. The contentions made by the Petitioner in person *in extenso* were given careful consideration as also the contentions of Learned Government Advocate for the State-Respondents. The pleadings and documents on record, including Judgments and Orders of the Hon'ble Supreme Court and this High Court has been meticulously perused by me.

34. The entire exercise of discussing the history of the Petitioner's case is to enable a clear comprehension of the matter and to lay it to rest finally while considering whether the Petitioner is entitled to the claims advanced by him. The plethora of Petitions in which the Petitioner has been involved in are as follows;

- (i) Writ Petition No.03 of 1991 — filed by the Petitioner before the High Court of Sikkim;
- (ii) Special Leave to Appeal (Civil) No.406-14/1993 — filed by the State of Sikkim before the Supreme Court of India;
- (iii) Civil Appeal No.4290/1994 arising out of Special Leave to Appeal (Civil) No.406-14/1993 — filed by the State of Sikkim before the Supreme Court of India;
- (iv) I.A. No.10 of 1993 in Civil Appeal No.4290 of 1994 arising out of Special Leave to Appeal (Civil) No.406-14/1993 — filed by the Petitioner before the Supreme Court India;
- (v) Contempt Petition No.184/1994 in Civil Appeal No.4290/94 — filed by the Petitioner before the Supreme Court India;
- (vi) Writ Petition No.30 of 1994 — filed by the Petitioner before the High Court of Sikkim;
- (vii) Civil Review Petition No.05/1995 — filed by the State of Sikkim before the High Court of Sikkim;
- (viii) IA No.11 of 1997 in Civil Appeal Nos.4289-97/1994 — filed by the Petitioner before the Supreme Court India;
- (ix) Writ Petition No.08 of 1998 — filed by the Petitioner before the High Court of Sikkim;
- (x) Review Petition No.04/1998 — filed by the Petitioner before the High Court of Sikkim;
- (xi) Special Leave to Appeal (Civil) Nos. 18990-18991/1998 — filed by the Petitioner before the Supreme Court India;
- (xii) Civil Misc. Appln. No.214/1999 — filed by the Petitioner before the High Court of Sikkim;

- (xiii) Contempt Petition No. 1/2000 — filed by the Petitioner before the High Court of Sikkim;
- (xiv) Special Leave to Appeal (Civil) No.21318/2000 — filed by the Petitioner before the Supreme Court India.
- (xv) Writ Petition (C) No.24 of 2005 — filed by the Petitioner before the High Court of Sikkim;
- (xvi) Writ Petition (C) No.46/2005 — filed by the Petitioner before the High Court of Sikkim;
- (xvii) Crl.M.C. No.1/2006 — filed by the Petitioner before the High Court of Sikkim;
- (xviii) Special Leave to Appeal (Civil) No.9571/2007 — filed by the Petitioner before the Supreme Court India;
- (xix) Review Petition No.855 of 2007 — filed by the Petitioner before the Supreme Court India.

35. All the Petitions filed by him deal with his pay fixation which according to him is erroneous at various levels. The pith and substance of his case therefore revolves around the interpretation of Paragraph 28(4) of the Judgment of this High Court, dated 13-12-1995, in Writ Petition No.30 of 1994, wherein the Court has clearly explained that the years when he was not employed by the Government of Sikkim, would be discounted (excluded) while reckoning his qualifying service, towards notional fixation of initial pay in the grade and also for the purpose of pension. Paragraph 28(4) is once again extracted hereinbelow for perusal;

“28. Keeping everything in view and all the matters considered in the preceding paragraphs we think that justice would be met if steps in the following manner are taken by the Government :

-
- 4. Total period of service on adhoc or contractual basis, ignoring the period of break if any, is to be reckoned as qualifying service towards notional fixation of initial pay in the grade and also for the purpose of pension.

.....”

36. On pain of repetition, it is elucidated herein that the Petitioner appeared to face a conundrum in the understanding of this Paragraph, consequently, the Court vide its interim order dated



10-02-1996, in Civil Review Petition No.05 of 1995, again deigned it fit to explain to him that regarding arrears of pay there cannot be any order, but regarding fixation of initial pay if and when his service is regularised, the case would be covered under Clause (4) of Paragraph 28 of the aforementioned Judgment. The Civil Review Petition (*supra*) disposed of on 23-05-1996, reiterated this aspect and observed that the total period of service on *ad hoc* or contractual basis, ignoring the period of break, if any, is to be reckoned as qualifying service towards notional fixation of initial pay in the grade and also for the purpose of pension. This Court was rather indulgent towards the Petitioner, when he filed Contempt Petition No.01 of 2000 against the Commissioner-cum-Secretary, Department of Education, for alleged non-compliance of the Orders of this Court dated 13-12-1995 in Writ Petition No.30 of 1994 and 10-02-1996 and 23-05-1996 in Civil Review Petition No.05 of 1995, by again explaining in its Judgment dated 05-09-2000 that "*the service rendered on contract by the petitioner with effect from 16.7.1987 till 21.3.1991 was counted for re-fixation of pay ignoring the break from 16.12.1987 till 15.2.1988. The period from 22.3.1991 till 9.6.1996 was not taken into consideration for fixation of pay.*" The Petitioner was of the view that this period of approximately five years should also have been included for fixation of his pay because according to him the word 'break' occurring in Paragraph 28(4) of the Judgment conveyed that sense. The Court observed that they were unable to agree with his submission as the said Paragraph had clearly mentioned how the fixation of initial pay was to be made. In Writ Petition (C) No.46 of 2005 the Court was again rather indulgently elucidated to the Petitioner, vide Judgment



dated 05-03-2007, the meaning of Paragraph 28(4) of the Judgment of this High Court, dated 13-12-1995 in Writ Petition No.30 of 1994. The Court went on to explain that the Petitioner had been given the benefit of advancement grade by treating two disjuncted periods of two years and eight years as the required continuous service of ten years for granting advancement grade. However, he wanted even more. He wanted the period, which is not his period of actual service at all, also to be counted for giving advancement grade.

37. As already revealed in Paragraph 6 (*supra*) of the instant Judgment, the Government had vide its communication dated 14-06-1994 required him to appear at the interview for the post of PGT (Maths) on 02-07-1994 at 10.30 a.m. in the Chambers of the Director, Education, which communication he refused to accept. He also failed to attend the interview and consequently no appointment could be given to him as delineated by the Government in their correspondence dated 26-07-1994. It is thus apparent that the Petitioner on account of his recalcitrance had lost an opportunity of being appointed in the year 1994 itself and thus cannot cry foul after refusing to attend an interview of which he was aware but ignored.

38. The history of the Petitioner's case thus traversed also reveals that, every time there has been a change of guard in the High Court, in other words, when a new Chief Justice or Acting Chief Justice has taken over the reins of the Court, the Petitioner rather promptly brought up the same matter concerning the fixation of his notional pay and of advancement grade, before the Court by way of Writ Petitions. Unfortunately, the State-Respondents did not strongly resist the Petitioner's case nor were they able to present



their case vociferously seeking dismissal of the Petitioner's case *in limine* in all the previous Petitions, when it is manifest that all claims have been duly settled.

39. In light of all the explanations that have emanated in the various decisions of this High Court and the dismissal of the various Leave Petitions filed by him before the Hon'ble Supreme Court, the unerring conclusion is that despite the reliefs that have been handed out to the Petitioner, he is under a false belief that by his shooting in the dark, the interpretation of the words "*ignoring the break*" will be turned around to suit his purpose by some stroke of good luck. This cannot and will not be so. The Petitioner is bent upon wasting precious judicial hours of the Court. He insists on conjuring up arguments where none exists, more so when his matter has been repeatedly explained with clarity by the aforementioned decisions. The interpretation given by the Petitioner to Paragraph 28(4) *supra* is absolutely unacceptable and a deliberate mis-interpretation of the words by the Petitioner, to obtain wrongful financial benefits. The Learned Single Judge of this Court had also while disposing of Review Petition No.04 of 1998, vide Order dated 11-09-1998 revealed that the continuous stream of ligations on the same topic must be stopped.

40. Considering the amount of time he has spent in the various Courts pursuing litigation and in issuing correspondence to the Department of Education with regard to the imagined injustice meted out to him, it is worth pondering over how much time he actually spent in his profession of teaching, how many precious academic hours were lost by his aforementioned acts, which lack

conscience and deprived his students of their right to quality education.

41. While on this thread, the records of the case also reveal that the Petitioner had been provided with a pro bono Legal Aid Counsel by the Sikkim State Legal Services Authority. The Petitioner however filed I.A. No.14 of 2024 an application seeking disposal of the case, while also making allegations against the Learned Advocates of the State. On 27-03-2024 the Petitioner in open Court sought to withdraw the I.A. (*supra*) which was accordingly disposed of as withdrawn. The Legal Aid Counsel, who was thus appointed, submitted that the Petitioner in the I.A. (*supra*) had also made allegations against him, while at the same time directing him to surrender the case papers to the Petitioner, which he complied with. He thus sought to retire from the matter which request was accordingly permitted. This Court on 27-03-2024 then recorded as follows;

“.....

As this Court had provided the Petitioner with a Legal Aid Counsel from the panel of lawyers of the Sikkim State Legal Services Authority, the Petitioner today submits that he desires to make his own submissions before this Court and does not require a lawyer to assist him. Although the provisions of free legal aid have been explained to him he declines the offer of this Court to engage a Counsel for him from the empanelled Advocates of Sikkim State Legal Services Authority and claims to be competent to put forth his case before this Court.

.....”

The above order is being reflected as it augments the diffident conduct of the Petitioner which reeks of belligerence and reveals his attempts to thwart the course of justice.

42. In the end result, in view of the entire foregoing discussions, I have arrived at the indisputable conclusion that the Petitioner is not entitled to any of the reliefs that he claims in the



instant Writ Petition, which is therefore dismissed as being devoid of any merit. In light of the submissions of the Learned Government Advocate with regard to the payment of a sum of ₹ 6,75,000/- (Rupees six lakhs and seventy five thousand) only, which would be subject to the outcome of this case, as ordered by this Court on 09-12-2020, it is left open to the State-Respondents to take necessary steps in this context, if deemed essential.

43. For the consistent loss of judicial working hours that have accrued, on account of the frivolous litigation indulged in by the Petitioner and for the consequent abuse of the process of Court, I am of the considered view that the Petitioner is liable to and is directed to pay costs of ₹ 1,00,000/- (Rupees one lakh) only.

44. The Petitioner shall deposit the cost within a period of one month from today with the State Legal Services Authority (SSLSA). The SSLSA shall utilise the amount for providing the requisite infrastructure in the "*Sikkim Divyang Sahayata Samiti*", Zero Point, Opposite Old Assembly House, NH 10, Gangtok, Sikkim. I stay my hands from imposing higher costs on the Petitioner, bearing in mind that he is now a retired school teacher.

45. Writ Petition stands disposed of accordingly.

(Meenakshi Madan Rai)
Judge

04-09-2024

Approved for reporting : **Yes**